

**Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody
(Motion Under 28 U.S.C. § 2255)**

INSTRUCTIONS

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
5. A filing fee is not required to file a motion to vacate, set aside or correct a federal sentence under 28 USC 2255.
6. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
7. When you have completed the form, send the original and one copy to:
Clerk, United States District Court
Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94123
8. If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District _____
Name (<i>under which you were convicted</i>): _____	
Docket or Case No.: _____	
Place of Confinement: _____	Prisoner No.: _____
UNITED STATES OF AMERICA	
Movant (<i>include name under which convicted</i>) V. _____	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: _____

- (b) Criminal docket or case number (if you know): _____
2. (a) Date of the judgment of conviction (if you know): _____
(b) Date of sentencing: _____
3. Length of sentence: _____
4. Nature of crime (all counts): _____

5. (a) What was your plea? (Check one)
(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing: _____

(b) At the arraignment and plea: _____

(c) At the trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: _____

or any other relief to which movant may be entitled.

Christopher Morales

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____.

(month, date, year)

Executed (signed) on _____ (date)

Christopher Morales

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

20 UNITED STATES,) Case No.: 3:19-cr-00564-SI
21 Plaintiff,)
22 vs.) **PETITIONER'S MOTION TO VACATE,**
23) **SET ASIDE, OR CORRECT SENTENCE**
24) **PURSUANT TO 28 U.S.C. CODE § 2255**
25) **MEMORANDUM OF POINTS AND**
26) **AUTHORITIES**
27)
28) Dept:
Defendant.) Date:
) Time:

TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA:

PLEASE TAKE NOTICE THAT on the above-noted date, the Petitioner, Mr. Ulysses
Valdiosera, by and through counsel, hereby files the following motion to vacate, set aside, or
correct sentence pursuant to 28 U.S.C. § 2255.

I. INTRODUCTION

Petitioner Mr. Ulysses Valdiosera, through undersigned counsel, hereby respectfully
moves this Court pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Mr.
Valdiosera is currently in federal custody in Arkansas. On September 11th, 2020, this Court
sentenced Mr. Valdiosera to five years imprisonment plus four years supervised release, and a

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1 special assessment of \$100. This sentence was in accordance with the mandatory minimum of
 2 five years of imprisonment required by Federal Sentencing Guidelines for a defendant who was
 3 not eligible for safety valve relief under 18 U.S.C. § 3553(f)(1). Mr. Valdiosera has not sought a
 4 direct appeal, but respectfully seeks that this Court vacate, set aside, or correct his sentence
 5 pursuant to 28 U.S.C. § 2255 on the grounds his current sentencing was improperly influenced
 6 by fundamental defect which inherently resulted in the complete miscarriage of justice.

7

8 **II. STATEMENT OF FACTS**

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10 Mr. Ulysses Valdiosera (hereafter “Mr. Valdiosera”) was indicted on October 24th, 2019
 11 by a federal grand jury following a months’ long investigation conducted by the Bureau of
 12 Alcohol, Tobacco, Firearms, and Explosives (hereafter “ATF”). During the investigation, Mr.
 13 Valdiosera was allegedly observed selling methamphetamine to an ATF Confidential Informant
 14 (hereafter “CI”) and subsequently selling firearms to the same CI on two other occasions. He was
 15 arrested by ATF and homeland security agents on November 13th, 2019 and ultimately agreed to
 16 plead guilty to violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii), Possession with Intent to
 17 Distribute and Distribution of 5 grams and More of Methamphetamine, an offense that carries a
 18 five-year mandatory minimum prison sentence.

19 Almost one year prior to his arrest, the First Step Act was signed into law and became
 20 effective on December 21st 2018. The First Step Act amended 18 U.S.C. § 3553(f)(1) by directly
 21 expanding the criteria required for a defendant to become eligible for safety valve relief, thereby
 22 allowing for even more defendants to qualify for relief. If a defendant qualifies for safety valve
 23 relief, it gives the sentencing judge discretion to sentence the defendant to a lesser prison term
 24 than the otherwise required mandatory minimum sentence. Specifically, 18 U.S.C. § 3553(f)(1)
 25 states that a defendant is eligible for safety valve relief if the defendant does not have.

26

27 DEFENDANT’S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT

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Prior to sentencing on September 11th, 2020, Mr. Valdiosera’s trial counsel Amy Craig advised him that he was not eligible to benefit from safety valve relief. According to Ms. Craig, it was commonly understood that under 18 U.S.C. § 3553(f)(1), a defendant was not eligible for safety valve relief if they had (A) more than four criminal history points, (B) a prior three-point offense, *or* (C) a prior two-point violent offense. Under this interpretation of the statute, if a defendant satisfied (A) and either one of (B) *or* (C), but not necessarily both, then that defendant was barred from safety valve relief. Mr. Valdiosera had a total of seven criminal history points and a prior three-point offense. He does not have a prior two-point violent offense. Therefore he was determined to be barred from safety valve relief for satisfying (A) and (B). Following the advice of counsel, Mr. Valdiosera did not request the court to consider safety valve relief under 18 U.S.C. § 3553(f)(1). Mr. Valdiosera was subsequently sentenced to 60 months (or five years) imprisonment, four years supervised release, and a \$100. Mr. Valdiosera began serving his sentence on July 8th, 2021 and is now currently in federal custody in Arkansas.

However, on May 21st, 2021 the Ninth Circuit published its decision in *United States v. Lopez*, 998 F.3d 431 (2021) which clarified how to interpret subdivision (f) of 18 U.S.C. § 3553. The Court held that that in order to be eligible for safety valve relief the defendant needs to show that he does not have (A) more than four criminal history points, (B) a prior three-point offense, *and* (C) a prior two-point violent offense, cumulatively. In other words the defendant is barred from safety valve relief if they satisfy all three requirements of (A), (B), *and* (C), cumulatively. The *Lopez* decision clarified the Ninth Circuit's position on the interpretation of 18 U.S.C. § 3553(f)(1) which to date has been subject to a circuit split.

As mentioned above, Mr. Valdiosera was sentenced to the mandatory minimum sentence allowed of 60 months imprisonment, the lowest possible sentence that the sentencing Judge could give under the law. This was despite the fact that Mr. Valdiosera, on the advice of counsel, did not pursue safety valve relief under the improper belief that he was not eligible. However, in light of the Ninth Circuits decision in *Lopez*, Mr. Valdiosera has filed this timely 28 U.S.C. §

DEFENDANT'S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT

1 2255 to vacate, set aside, or correct his sentence then was improperly
 2 required by the mandatory minimum at the time of his sentencing.
 3

4 **III. ARGUMENT**

5 **A. THE NINTH CIRCUIT'S DECISION IN *LOPEZ* ANNOUNCED A NEW
 6 RULE OD SUBSTANTIVE LAW THAT SHOULD BE APPLIED
 7 RETROACTIVELY TO VACATE, SET ASIDE, OR CORRECT MR.
 8 VALDIOSERA'S SENTENCE, OTHERWISE HIS FIFTH AMENDMENT
 9 RIGHT TO EQUAL PROTECTION.**

10 28 U.S.C. § 2255(a) allows a petitioner to file a motion to “vacate, set aside or correct”
 11 the petitioner’s conviction or sentence “upon the ground that the sentence was imposed in
 12 violation of the Constitution or law of the United States, or that the Court was without
 13 jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum
 14 authorized by law, or otherwise subject to collateral attack.” For an error that is neither
 15 jurisdictional or constitutional, a defendant is entitled to § 2255 relief only if the error constitutes
 16 “a fundamental defect which inherently results in the complete miscarriage of justice” or “an
 17 omission inconsistent with the rudimentary demands of fair procedure. *Hill v. United States*, 368
 18 U.S. 424, 428 (1962); *see Peguero v. United States*, 526 U.S. 23, 27 (199). Upon § 2255 review,
 19 a convicted defendant must show both “cause” excusing his double procedural fault, and “actual
 20 prejudice” resulting from errors of the trial court. *United States v. Frady* 456 U.S. 152 (1982).

21 Mr. Valdiosera contends that the Ninth Circuit’s decision in *United States v. Lopez*, 998
 22 F.3d 431 (2021) announced a new rule of rule of substantive law and that this new rule can be
 23 applied retroactively on collateral attack to vacate, set aside, or correct his sentence. As it stands
 24 his sentencing was influenced by a fundamental defect which inherently resulted in a complete
 25 miscarriage of justice by subjecting him to a harsher sentence than he otherwise would have been
 26 entitled to. Additionally his current sentence violates his Fifth Amendment right to Equal
 27

28 DEFENDANT'S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT

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Protection by intentionally subjecting him to a harsher sentence than other similarly situated defendant's without a rational basis for doing so.

I. THE RULE ANNOUNCED IN *LOPEZ* IS A RULE OF SUBSTANTIVE LAW AND IS THEREFORE NOT BARRED BY THE TEAGUE DOCTRINE AND MAY BE APPLIED RETROACTIVELY TO VACATE, SET ASIDE, OR CORRECT MR. VALDIOSERA'S SENTENCE.

In *Teague v. Lane*, 489 U.S. 288, 310 (1989) the United States Supreme Court ruled that new constitutional rules of criminal procedure are not retroactively applicable to cases on collateral review. A four-step analysis must be undertaken to determine whether *Teague* bars relief. First, “because *Teague* by its terms applies only to procedural rules,” the court must first determine if the rule on which the movant relies is substantive or procedural. *Bousley v. United States*, 523 U.S 614, 620 (1998). Second, if it is determined that the rule is one of procedure, “the court must ascertain the date on which defendant’s conviction and sentence became final for *Teague* purposes,” *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994). Third, the court must determine whether a court at that time would have felt compelled by existing precedent to apply the rule the movant propounds. *Id.* Fourth, if the court concludes the rule the movant seeks is both one of criminal procedure and “new,” then the court must determine whether either of two *Teague* exceptions apply. *Id.* If the rule is one of criminal procedure and neither exception applies then relief is barred. On the other hand, if the rule is determined to be substantive then *Teague* will not bar relief.

Here, Mr. Valdiosera' conviction and sentence became final on the September 11th, 2020 and by filing this motion prior to September 11th, 2021 it is timely. The new rule announced in *Lopez* is substantive and not procedural and therefore not barred by the *Teague* doctrine nor subject to the rest of the *Teague* doctrine analysis. Finally, Mr. Valdiosera did not raise the issue

DEFENDANT'S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT

1 safety valve relief at his sentencing because relied to his detriment on the advice of counsel
 2 which resulted in him being prejudiced in his sentencing.

3

4 **A. THE DECISION IN *LOPEZ* IS RETROACTIVELY
 5 APPLICABLE TO CASES ON COLLATERAL REVIEW
 6 BECAUSE IT IS SUBSTANTIVE AND NOT PROCEDURAL.**

7 In *Teague v. Lane*, 489 U.S. 288, 310 (1989) the United States Supreme Court ruled that
 8 new constitutional rules of criminal procedure are not retroactively applicable to cases on
 9 collateral review. However, new rules of constitutional substantive law are not barred by *Teague*,
 10 and may be retroactively applied to cases on collateral review. *see Schiro v. Summerlin*, 542 U.S.
 11 348, 353 (2004). “A rule is substantive rather than procedural if it alters the range of conduct or
 12 the class of persons that the law punishes.” *Id.* at 354. This includes decisions “that narrow the
 13 scope of a criminal statute by interpreting terms...” *Id.* at 352. Procedural rules, in contrast
 14 regulate the manner of determining the defendant’s culpability, they “do not produce a class of
 15 persons convicted of conduct the law does not make criminal, but merely raise the possibility
 16 that someone convicted with use of the invalidated procedure might have been acquitted
 17 otherwise.” *Id.* at 352-353

18 In *Johnson v. United States*, 576 U.S. 591 (2015), the United States Supreme Court
 19 struck down a residual clause contained in the Armed Career Criminal Act of 1984 on the
 20 grounds that it was overly vague. The Court later confirmed in *Welch v. United States*, 136 S. Ct.
 21 1257, 1265-66 (2016), that by voiding the residual clause as vague, the Court in *Johnson* had
 22 announced a new substantive rule that could be applied retroactively on collateral review. The
 23 Court reasoned that by striking down the residual clause for vagueness, *Johnson* changed the
 24 substantive reach of the Armed Career Criminal Act, altering “the range of conduct or class of
 25 persons that the [Act] punishes.” *Id.*

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 27 DEFENDANT’S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT
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1 The same can be said of the new interpretation of 18 U.S.C. § 3553(f)(1) announced in
 2 *Lopez* despite merely being a decision based on statutory interpretation. By requiring that all
 3 three criteria of the provision be met, as opposed to only two, *Lopez* directly changes the class of
 4 persons that 18 U.S.C. § 3553(f)(1) punishes. Mr. Valdiosera belonged to the ineligible class and
 5 was punished accordingly under the previous interpretation. However, if he were sentenced
 6 today he would be in a different class of defendant's that qualify for safety valve relief. The
 7 *Lopez* decision essentially prohibits a certain category of punishment (or sentence) for a class of
 8 defendants because of their status or offense which “ ‘represents the clearest instance’ of
 9 substantive rules for which retroactive application is appropriate.” *Welch v. United States*, 136 S.
 10 Ct. 1257, 1267 (2016). The substantive reach of the statute was greatly expanded to allow for
 11 many more defendants to qualify, or vice versa, the Court’s interpretation of the terms of the
 12 statute narrowed the scope of the statute by allowing for fewer defendants to be barred from
 13 relief. The rule announced in *Lopez* is a substantive rule that is not barred by the *Teague*
 14 Doctrine and should be applied retroactively to Mr. Valdiosera’s collateral review to vacate, set
 15 aside, or correct his sentence to a lower term than the mandatory minimum of five years
 16 imprisonment.

17

18 **B. MR. VALDIOSERA’S CURRENT SENTENCE, AS IT STANDS,**
 19 **VIOLATES HIS FIFTH AMENDMENT RIGHT TO EQUAL**
 20 **PROTECTION BECAUSE IT INTENTIONALLY SUBJECTS HIM TO A**
 21 **HARSHER PUNISHMENT THAN SIMILARLY SITUATED**
 22 **DEFENDANTS WITH NO RATIONAL BASIS FOR DOING SO.**

23 The Equal Protection Clause of the Fourteenth Amendment states that no state shall
 24 “deny to any person within its jurisdiction the equal protection of law.” U.S. Const. amend XIV,
 25 § 1. The Fifth Amendment due process clause extends this prohibition to the federal government.
 26 *see Lee v. City of Los Angeles*, F.3d 668, 688 (9th Cir. 2001). A person can establish an equal
 27 protection claim by establishing that he was intentionally discriminated against based on

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1 membership in a protected class or that similarly situated individuals were treated differently
 2 without a rational basis for the difference in treatment. *United States v. Armstrong*, 517 U.S. 456,
 3 466 (1996).

4 Mr. Valdiosera concedes that prisoners are not a suspect classification for equal
 5 protection grounds. *see Lee v. City of Los Angeles*, F.3d 668, 689 (9th Cir. 2001). He also does
 6 not argue that the federal governments purpose for enacting the First Step Act and the
 7 amendment to 18 U.S.C. § 3553(f)(1) was done for a legitimate government purpose. Instead, he
 8 argues that he has been intentionally treated differently than others that are similarly situated to
 9 him, that here is no rational basis for the difference in treatment, and the difference in treatment
 10 does not help to further the federal government's legitimate interests.

11 Specifically, there is no rational basis for treating defendants' who were sentenced after
 12 the First Step Act was enacted in December 2018, but before the *Lopez* decision in May of 2021,
 13 differently than defendants sentenced after the *Lopez* decision. Both classes of defendants were
 14 sentenced under the same language of U.S.C. § 3553(f)(1) and, in some instances, both classes of
 15 defendants may meet the same criteria under the statute but will receive different sentences based
 16 solely and arbitrarily on the date when their sentencing took place. The legislative intent of the
 17 First Step act was to allow for certain defendants who meet certain criteria to be eligible to
 18 receive a lower sentence. The *Lopez* decision greatly expanded who was eligible, not by
 19 changing the law, but simply by clarifying the exact meaning of 18 U.S.C. § 3553(f)(1)

20 . The whole reason the Federal Government enacted the First Step Act and amended 18
 21 U.S.C. § 3553(f)(1) was specifically to allow defendants in Mr. Valdiosera's position to be
 22 entitled to safety valve consideration during sentencing. Discriminating against defendants
 23 sentenced before *Lopez*, who relied on erroneous advice of counsel, is arbitrary and does nothing
 24 to further the legitimate interests of the federal government. In fact, it directly conflicts with the
 25 legislative intent by arbitrarily making Mr. Valdiosera ineligible for safety valve relief despite
 26 meeting all the criteria to be eligible. For these reasons, Mr. Valdiosera's sentence, as it stands,

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 28 DEFENDANT'S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT
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1 violates his Fifth Amendment right to Equal Protection and should be vacated, set aside, or
2 corrected so that he will be treated as those defendants similarly situated to him who received
3 lesser sentences.

4

5 **IV. Conclusion**

6 For the foregoing reasons, Mr. Valdiosera' respectfully requests this Court to
7 retroactively apply the new rule announced in *Lopez* to apply consider safety valve relief and
8 vacate, set aside, or correct his sentence to an appropriately lower term. In the alternative, Mr.
9 Valdiosera respectfully requests this Court to find that his sentence as it currently stands violates
10 his Fifth Amendment right to Equal Protection and appropriately vacate, set aside or vacate his
11 sentence pursuant to 28 U.S.C. § 2255.

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14 DATED: September 7th, 2021

15 By *Christopher Morales*
16 Christopher F. Morales
17 Attorney for the Defendant

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27 DEFENDANT'S 28 U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT

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